Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Procedures for Commission Review of State	)	PS Docket No. 16-269
Opt-Out Requests from the FirstNet Radio	)	
Access Network	)	

REPLY COMMENTS OF SOUTHERN LINC

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Southern Communications Services, Inc. d/b/a Southern Linc ("Southern Linc") submits reply comments in response to the Notice of Proposed Rulemaking ("NPRM") concerning how to structure the Commission's review of requests to opt out from the FirstNet radio access network deployment.[1]

INTRODUCTION AND SUMMARY

The record in this proceeding supports the Commission permitting state alternative plans that include both a radio access network ("RAN") and a core network. While the Commission's review is limited to ensuring RAN interoperability, the record establishes that the Commission should not foreclose any state plan that includes both RAN and core elements. Allowing states or their network partners to operate their own core networks, which would interoperate with FirstNet's core network, is fully consistent with the Spectrum Act.[2] Such an approach would enable FirstNet to take advantage of existing core network elements, including highly resilient facilities such as Southern Linc's redundant cores, to deploy public safety networks more rapidly

[1] *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Notice of Proposed Rulemaking, PS Docket No. 16-269, FCC 16-117 (rel. Aug. 26, 2016).
[2] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 ("Spectrum Act").

and at lower cost than building a new network. No commenter demonstrates that there is any prohibition on state-operated cores or that doing so would harm FirstNet's national network.

The record also establishes widespread support for the Commission to adopt streamlined procedures that enable a rapid yet cooperative review of state alternative plans. Nearly all commenters agree that the Commission should, for example, permit states to amend or supplement their proposals to address any perceived concerns before the Commission issues a final decision. There is also widespread agreement that states need only issue an RFP within 180 days, not fully complete the vendor contract. And the record strongly supports the Commission issuing a written explanation of its final decision to enable appeal or other review of adverse decisions.

FirstNet stands virtually alone in seeking to erect unnecessary barriers to state opt-out plans, beyond what is required by the statute. Its rigid approach reflects its own interest in deploying a single network notwithstanding Congress's express authorization of states to opt out and the potential benefits of state operated RAN. FirstNet's efforts to impose strict timelines and unnecessary obligations on states ring particularly hollow in light of its own delays, which it acknowledges arose from the "complexity" of the process. The Commission should reject FirstNet's proposals and instead pursue sensible procedures that enable states to reasonably exercise their opt-out rights.

DISCUSSION

I. The Record Supports the Commission Permitting State Plans That Include both RANs and Cores.

As Southern Linc explained in its comments, state-operated cores are consistent with the statute and can promote efficient and less expensive deployment.[3] Indeed, the record confirms that there is no statutory prohibition on states or their carrier partners operating their own core networks, and allowing states or their carrier partners to operate their own core networks would promote the public interest.

For example, the State of Alabama agrees that nothing in the Spectrum Act prohibits a state from deploying core network elements to optimize backhauled traffic management or to address potential deficiencies in FirstNet's approach.[4] Alabama notes that Congress took specific action when it wanted to limit states' flexibility, by, for example, limiting states' ability to generate revenue, requiring states to issue an RFP, and prohibiting the states from selling services directly to the public.[5] Thus, the absence of a similarly express prohibition on states' deploying core network elements suggests that Congress did not intend to prohibit states from doing so.[6]

Alabama further demonstrates how state-operated cores can provide a superior architecture to a state RAN coupled with the FirstNet core.[7] Alabama explains that "if the state

[3] "The Spectrum Act directs FirstNet to take a comprehensive approach to deploying the NPSBN, and explicitly encourages FirstNet, among other things, to 'leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network.'" *See* Comments of Southern Linc, PS Docket No. 16-269, at 3 (filed Oct. 21, 2016) (citing Spectrum Act § 6206(b)(1)(C)) ("Southern Linc Comments").
[4] Comments of the State of Alabama, PS Docket No. 16-269, at 9-10 (received Oct. 22, 2016) ("Alabama Comments").
[5] *Id*.
[6] *Id*.
[7] *Id.*

deploys only RAN, it is entirely reliant on FirstNet to provide all Core services," which could create a less efficient architecture given the combination of elements controlled by different entities.[8] Further, if the definition of RAN includes backhaul, "states would be required to transport traffic from their local areas, to wherever FirstNet may choose to locate their Evolved Packet Gateways, only to 'trombone' the traffic back to their original locations. Such an architectural requirement would prove to be very inefficient, and result in a highly ineffective design."[9] Finally, Alabama explains that "if FirstNet (or its vendor) is not offering Core services to the state's Covered Lease Agreement (CLA) traffic (*i.e.*, consumer traffic), then the state's RAN vendor will be forced to use nascent technologies (*i.e.*, MOCN3) with an unclear path towards achieving FirstNet's objectives."[10]

Other commenters, including Pennsylvania, Nevada and Fairfax County, Virginia emphasize the importance of operating a state RAN under a common technical framework.[11] None takes the position that states cannot operate their own core networks. Instead, these state and municipal commenters argue that the FCC's interpretation of what kind of state decisions could be said to alter the NPSBN is beyond the scope of what Congress intended.[12] In other words, these commenters confirm that Congress intended states to have more flexibility in designing their alternative plans.

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[8] This includes location services, roaming, billing, eMBMS, device provisioning, user equipment, applications (VoLTE, SMS, MCPTT), and possibly Operational Support Systems (OSS). *Id.* at 9.

[9] *Id*.

[10] *Id.*

[11] *See* Comments of Fairfax County, Virginia, PS Docket No. 16-269 at 7 (filed Oct. 21, 2016) ("All components of the NPSBN, including the core network and RAN, must be operated under common technical network policies.") ("Fairfax Comments"); Comments of the Commonwealth of Pennsylvania at 6 (filed Oct. 21, 2016) ("[A]ll components of the NPSBN, including the core network and the RAN, must be operated under common technical network policies… approval by the Commission of the interoperability capabilities of a state's alternative plan satisfies the need for the common technical network policies.") ("Pennsylvania Comments"); Comments of the State of Nevada, PS Docket No. 16-269 at 5 (filed Oct. 21, 2016) ("Nevada Comments").

[12] *See* Fairfax Comments at 10; Pennsylvania Comments at 9-10; Nevada Comments at 8.

While FirstNet focuses on ensuring that any State RAN complies with FirstNet's network and interoperability policies under the FCC's two pronged interoperability test,[13] nothing in its comments is inconsistent with allowing core network elements to be operated by a state or its network partner. Indeed, a state-operated core can satisfy FirstNet's interoperability requirements; FirstNet does not demonstrate otherwise.

II. The Commission's Opt-Out Procedures Should Promote a Rapid Yet Cooperative Review of State Plans

Commenters are unanimous in their agreement with the NPRM's proposal that the Commission restrict its review to confirming RAN interoperability.[14] The record also reflects widespread agreement among virtually all interested parties that the Commission should implement streamlined procedures that enable rapid assessment of state opt-out plans while giving states flexibility to meet the statutory requirements.

A. The Commission Should Permit a Governor's Designee to Submit an Opt-Out Notification.

There is widespread support in the record for allowing a governor's designee to submit the opt-out notice to the Commission. The First Net Colorado Governing Body ("FNCGB") and the State of Florida support allowing a governor's designee to be able to give notice of the opt-

[13] FirstNet Comments at 6.

[14] *See, e.g.*, FirstNet Comments at 3 ("After receiving [a state] alternative plan, the FCC is responsible for approving or disapproving the plan based on whether the state or territory has demonstrated that it be (1) in compliance with the minimum technical interoperability requirements contained in the Interoperability Board Report, and (2) interoperable with NPSBN."); APCO Comments at 5 ("[T]he Commission's role is limited to an evaluation of interoperability…"); Pennsylvania Comments at 8 ("describing the Spectrum Act's two pronged interoperability test that the Commission must adhere to in making its determination regarding state alternative plans; Nevada Comments at 6-7.

out decision.[15] Likewise, Pennsylvania, Nevada and Fairfax County, Virginia, agree that the official opt-out response can be tendered by the Governor or the state point-of-contact.[16]

In contrast, FirstNet asserts that each state governor must personally submit that state's opt-out notice.[17] FirstNet points to the absence of a reference to a Governor's designee in the Section 1442(e)(3)(A) of the statute, and the inclusion of a Governor's designee Section 1442(e)(1), as evidence that Congress intended to require the Governor to personally submit the opt-out notice.[18] But these provisions are not equivalent; the former refers to the manner in which a governor receives information.[19] The latter refers to an actual decision that the governor him- or herself must make and does not describe how the notice must be transmitted to the FCC.[20]

More importantly, there is simply no coherent legal or public policy justification for requiring the governor to personally notify the Commission. While the statute provides that the governor "shall notify" the Commission,[21] if a governor directs a subordinate to notify the Commission (as well as NTIA and FirstNet) of its decision to opt out, the governor is in fact making the notification. Nothing in the statute suggests that the governor's notification must be personal, and simply communicating the governor's decision via a designee does not in any way mean that the governor has not made the relevant decision or initiated the communication to the Commission consistent with the statutory language. By suggesting otherwise, FirstNet leaves the

[15] Comments of The First Net Colorado Governing Body, PS Docket No. 16-269 at 3 (filed Oct. 21, 2016) ("FNCGB Comments"); Comments of the State of Florida, PS Docket No. 16-269 at 2 (filed Nov. 4, 2016) ("Florida Comments").
[16] Pennsylvania Comments at 2; Nevada Comments at 2; Fairfax Comments at 4.
[17] FirstNet Comments at 5.
[18] *Id*.
[19] *See* 47 U.S.C. § 1442(e)(1).
[20] *See* 47 U.S.C. § 1442(e)(3)(A).
[21] *Id*.

impression that it is simply looking for technical ways to disqualify states rather than honor the opt-out regime that Congress created.

B. The Commission Should Not Reject A State Alternative Plan Without Giving The State The Opportunity To Amend Or Supplement Their Proposal.

The NPRM proposes that, if the Commission disapproves a state alternative plan, the state will have forfeited the ability to deploy its own network, and the Commission will be barred from entertaining an amended plan.[22] If the FCC insists on issuing only final decisions with respect to the validity of a state opt out, the FCC should allow states a reasonable opportunity to address any perceived deficiencies before the FCC makes its final decision. Such an opportunity is consistent with the judicial review procedure in the statute and with due process.

The record strongly supports the Commission giving states such an opportunity to revise and supplement their alternative plan prior to the Commission's final decision. As Rivada Networks explains, "if all that stands between a plan's approval is some minor ambiguity or easily remedied deficiency, states should absolutely be afforded the opportunity to amend or clarify their plan."[23] State commenters similarly agree that states should be allowed to file amendments or provide supplemental information to their plan once it is filed with the Commission and prior to its decision.[24] States also agree that Commission staff should be required to discuss any plan deficiencies prior to the final ruling on the alternative plan.[25]

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[22] NPRM ¶ 59.
[23] Comments of Rivada Networks, PS Docket No. 16-269 at 1 (filed Oct. 21, 2016) ("Rivada Comments")
[24] Pennsylvania Comments at 6; Nevada Comments at 5; Florida Comments at 10; Comments of Indiana Integrated Public Safety Commission, PS Docket No. 16-269 at 4 (filed Oct. 20, 2016) ("IPSC Comments").
[25] *Id*.

FirstNet and APCO insist that the Commission cannot consider an amended or different alternative plan once the Commission has disapproved of the State's alternative plan.[26] But neither FirstNet nor APCO explains why the Commission cannot consider amendments or additional information prior to the Commission making its final determination.[27] The Spectrum Act does not prohibit the FCC from permitting multiple submissions before issuing a final disapproval.[28] FirstNet itself solicited multiple submissions for its own RFP, including a request for information, a request for 122 questions about the RFP, and the RFP itself.[29] FirstNet's rigid insistence that states may not have similar flexibility is inconsistent with its own experience, not required by the statute, and could inappropriately disqualify states that are entitled to opt out.

The Spectrum Act's judicial review provision defines reversible error as, among other things, the Commission's refusal to consider "pertinent and material" information in rendering its decision.[30] The Commission can avoid running afoul of that provision by permitting states to submit supplemental information that could be "pertinent and material," especially to cure any minor issues that can be easily addressed.

C. The Commission Should Not Require State Alternative Plans to Include a Completed Vendor Contract, RFP Process or Reference to a Winning Bidder.

State, state agency and municipal commenters unanimously agree that the statute does not require state alternative plans to issue or award an RFP within 180 days, much less make an

[26] FirstNet Comments at 10; APCO Comments at 6.
[27] *See Id*.
[28] *See generally* 47 U.S.C. § 1442.
[29] *See* James Mitchell, FirstNet Director of Program Management, *FirstNet Posts 122 Responses, 33 Amendments to RFP*, FIRSTNET.GOV (Feb. 29, 2016), http://bit.ly/2fG8QAO (describing responses to FirstNet's RFP); TJ Kennedy, FirstNet Acting General Manager, *FirstNet Moving Quickly to Analyze Public Notice, RFI Responses*, FIRSTNET.GOV, http://bit.ly/2fhPhAd (Nov. 3, 2014) (describing FirstNet's public comment and response period and its Request for Information process).
[30] 47 U.S.C. § 1442(h)(2)(C) ("The court shall affirm the decision of the Commission unless… the Commission was guilty of misconduct in refusing to hear evidence pertinent and material to the decision…").

award within that period of time.[31] Indiana's Integrated Public Safety Commission adds that if Congress intended to require bids or a contract award to claim completion, the Spectrum Act would have described such a milestone as a "Vendor Selection" or "Contract Award" instead of "shall develop and complete requests for proposals.[32]

APCO nonetheless argues that state alternative plans must be based on a completed state RFP, including a final contract that has been awarded and signed. Such a requirement is not required by the statute and may not be feasible considering the time constraints under which states will have to develop and award an RFP and the limited scope of the Commission's review authority.[33] The Commission can readily assess a state's alternative plan without the state presenting a completed RFP or a binding contract with a specific vendor. To ensure compliance with FirstNet's interoperability requirements, a state can include a provision in its alternative plan that requires the winning vendor to comply with the interoperability provisions contained in FirstNet's interoperability documentation.[34]

A final contract or completed RFP also may not be feasible because there are other non-interoperability provisions that may need to be resolved before a final contract can be rewarded,

[31] Comments of the Texas Public Broadband Program, PS Docket No. 16-269 at 3 (filed Oct. 21, 2016) ("Entering a contract with the winning bidder and resolving any protests could take longer than 180 days and accordingly should not be required of the state within the 180-day period."); Pennsylvania Comments at 3 ("[T]he Act does not require that the [s]tate-RAN RFP be issued or awarded within 180 days. We agree with FirstNet that an RFP can be considered complete once a [s]tate 'has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and interoperability requires in accordance with 47 U.S.C. 1442(e)(3)(C)(i).'"); Nevada Comments at 3; Fairfax Comments at 4-5; Florida Comments at 3 ("The language of the [Spectrum] Act allows for states to submit an alternative plan with something less than full completion of the RFP process… [S]tates are not required to complete the entire RFP process, but only the RFPs themselves, by the time they submit their alternative plans.").

[32] IPSC Comments at 3-4.

[33] 47 U.S.C. 1442(e)(3)(B) ("Not later than 180 days after the date on which a Governor provides notice under subparagraph (A), the Governor shall develop and complete requests for proposals for the construction, maintenance, and operation of the radio access network within the State.").

[34] *See supra* note 14.

such as pricing. These provisions will not affect interoperability, but negotiations over prices, terms and conditions unrelated to interoperability will require time to complete.

FirstNet's own experience with the National RFP demonstrates that an RFP process is complex and may require more than 180 days to complete. FirstNet has experienced several delays in the RFP process to award the contract for the NPSBN. For example, FirstNet released its RFP in January, 2016 and gave vendors until late April to respond, but the RFP response deadline was extended twice to allow vendors more time to respond and ultimately concluded on May 31. FirstNet set a November 1, 2016 target date for awarding the contract, but delayed that goal as well.[35] In light of that history, FirstNet cannot plausibly maintain that states must meet fixed and aggressive timelines in their own RFP process.[36]

D. The Commission Should Provide a Written Explanation of its Final Decision to Enable Parties to Pursue Their Legal Rights to Appeal.

If the Commission disapproves a state plan, it should explain its rationale for the rejection in writing. State opt-outs were explicitly contemplated by Congress and FirstNet, and are an integral part of the national policy to protect public safety.[37] Commenters generally agree that the Commission should memorialize its final decision in writing. For example, Pennsylvania, Nevada, and Fairfax County, Virginia agree that the Commission should document its decision,

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[35] *See* Kelly Hill, *FirstNet delays contract award for national public safety network*, RCR WIRELESS (Oct. 28, 2016), http://bit.ly/2fzKVoQ.

[36] *See* Florida Comments at 4 ("Fairness also demands that the level of detail required from the state-submitted alternative plan to be no greater than that of the plan provided to each state by FirstNet. FirstNet, which has had more than 180 days to complete the request for proposal process, interprets its obligation to submit completed plans as requiring only "sufficient information to present the State plan with the details required pursuant to the Act for such plan, but not necessarily at any final award stage of such a process. Thus, FirstNet, which is required to complete the entire RFP process, does not believe a final award, let alone contract formation, is necessary in satisfying this obligation. It would be anomalous for the Commission to interpret a more rigorous standard on the states in their submission of alternative plans to the Commission.").

[37] *See* 47 U.S.C. § 1442(e)(2) (permitting a state either to "participate in the deployment of the nationwide, interoperable broadband network as proposed by the First Responder Network Authority," or "conduct its own deployment of a radio access network in such State").

provide a detailed written list of deficiencies, recommend corrective actions to the state and provide the state with a timely opportunity cure.[38]

APCO argues that the statute does not require the Commission to memorialize its final decision in writing and that doing so would lead to delays.[39] But the Spectrum Act expressly provides for judicial invalidation of a Commission disapproval if the Commission "refus[es] to hear evidence pertinent and material to the decision."[40] Such review cannot meaningfully occur without a written decision.[41] Moreover, the Commission must provide a reasoned explanation of its final decision to remain consistent with basic APA and due process principles. While Congress exempted FirstNet from the APA, it did not exempt the FCC.[42]

[38] Nevada Comments at 9 ("The Commission will provide a detailed written list of deficiencies and recommended corrective actions to the [s]tate with a timely opportunity to cure.");; Pennsylvania Comments at 11; Fairfax Comments at 11; *see also* Florida Comments at 11.
[39] APCO Comments at 9.
[40] 47 U.S.C. § 1442(h)(2)(C).
[41] Florida Comments at 11 ("Due process demands greater detail in the event of a disapproval notice. The Act prescribes a specific forum and standard for judicial review of the Commission's disapproval. Because states have appeal rights to the Commission's decision, the Commission must provide sufficient detail of its decision in order for the states to exercise those rights. A disapproval notice without adequate explanation of the basis for the decision would render judicial review meaningless.").
[42] 47 U.S.C. § 1426(d)(2).

CONCLUSION

Southern Linc looks forward to working with the Commission, NTIA, FirstNet, and opt-out states to create a reliable, resilient public safety network that will promote the public interest and fulfill Congress's mandate.

/s/ Michael D. Rosenthal

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